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Summary record of the 3485th meeting
Held at the Palais Wilson, Geneva, on Thursday, 5 April 2018, at 10 a.m.

Chair: Mr. Iwasawa

Contents

Organizational and other matters, including the adoption of the report of the Working Group on Communications (*continued*)

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (continued)

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The meeting was called to order at 10.05 a.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications (*continued*)

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (*continued*) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** invited the Committee to resume the second reading of its draft general comment No. 36 on article 6 of the Covenant (Right to life) at paragraph 12.

Paragraph 12 (*continued*)

2. **Mr. Heyns**, supported by **Mr. de Frouville**, said that it was not necessary to specify a context in which the development of the weapons in question was to be considered; the phrase "in military operations" should thus be deleted in the second sentence. It was worth noting that the use of automatic weapons in ordinary policing activities was an even greater problem than their use in military operations.

3. After a discussion in which **Mr. Heyns**, **Mr. de Frouville**, **Mr. Shany**, **Mr. Politi**, **Mr. Santos Pais** and **Ms. Pazartzis** took part, **the Chair** said that the weapons mentioned in the first and second sentences did not need to be qualified as "new". With the deletion of the word "new" in both sentences, the development of weapons discussed therein would refer both to the introduction of previously non-existent weapons and the introduction of novel applications for existing weapons.

4. *Paragraph 12, as amended, was adopted.*

Paragraph 13

5. **Mr. Shany** said that paragraph 13 addressed the issue of weapons of mass destruction and elaborated on the principle established in paragraph 12, that of the need to respect article 6 when developing, acquiring or using weapons. Some States had opposed the paragraph as a whole and had called for its deletion. France and other States had noted that the language used went further than the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons, by appearing to suggest that some such weapons were not indiscriminate in effect. The United Kingdom had suggested the deletion of "in particular nuclear weapons" in the first sentence; that was a useful suggestion, as it underscored the Committee's concern with the indiscriminate effect of all weapons of mass destruction. In the same sentence, he was in favour of referring to the "threat or use" of weapons of mass destruction. There had been a proposal to replace "incompatible" with "scarcely reconcilable", but the stronger language was needed to describe the incongruity between the threat or use of weapons of mass destruction and respect for the right to life.

6. As the paragraph clearly alluded to States' international obligations with regard to weapons of mass destruction, he disagreed with those States who saw the paragraph as interfering with existing disarmament treaties or frameworks.

7. Although the final phrase in the paragraph, on providing adequate reparation to victims whose right to life had been adversely affected by the testing or use of weapons of mass destruction, had not generated much controversy, France had expressed concern about it. If the phrase was retained, it could be qualified by the words "in accordance with the principles of international responsibility" to make it clear that no new reparation obligations were being created.

8. Some NGOs had advised the Committee to call on States parties to ratify the Treaty on the Prohibition of Nuclear Weapons. He was reluctant to do so, both because the Treaty was not yet in force and because the Committee did not habitually push for the ratification of non-human-rights instruments.

9. He supported the suggestion, put forward by a humanitarian organization which wished to remain anonymous, that the acquisition and transfer of weapons of mass destruction should be added to the list of acts which States must refrain from performing.

The list in the second sentence would thus read, "developing, producing, testing, stockpiling, acquiring, transferring and using them". The proposal was in line with the Committee's discussion on paragraph 12. In accordance with another suggestion made by the same organization and supported by many stakeholders, the words "deliberately or accidentally" could be inserted after "using them" in the same sentence.

10. **Mr. de Frouville** said that he supported the insertion of "acquiring, transferring" and the mention of international responsibility in relation to reparation. However, he was opposed to deleting the reference to nuclear weapons in the first sentence, particularly in the light of the General Assembly's adoption of the Treaty on the Prohibition of Nuclear Weapons in 2017. In retaining the reference, the Committee would simply be following up on its general comment No. 14 on the right to life. It was essential that, in drafting the general comment, the Committee should draw on its own jurisprudence, which in the current case would be general comments Nos. 6 and 14, both on the right to life.

11. **Ms. Brands Kehris** said that she generally supported the proposals made by Mr. Shany. In view of the importance of controlling the use of all weapons of mass destruction, she was in favour of deleting the phrase "in particular nuclear weapons", provided that the reference to the aim of nuclear disarmament was retained in the third sentence. She was in favour of inserting the words "deliberately or accidentally" in the second sentence, so long as the requisite editorial changes were made to ensure that it read logically.

12. **Mr. Koita** said that, given the absolute certainty as to the devastating effects of weapons of mass destruction, the tone of the paragraph was exceedingly cautious. The phrases stating that such weapons "can" destroy human life on a catastrophic scale and that the threat or use of such weapons "may" amount to a crime under international law were inaccurate; the threat or use of such weapons unquestionably destroyed human life on a catastrophic scale and unquestionably amounted to a crime under international law.

13. He endorsed the proposal to invite States parties to ratify the Treaty on the Prohibition of Nuclear Weapons and believed that the phrase on reparation for victims should be retained. He also believed that the sale of weapons of mass destruction should be added to the list of acts which States must refrain from performing.

14. **Mr. Santos Pais**, echoed by **Ms. Kran**, said that he was in favour of referring to the "threat or use of" weapons of mass destruction, retaining the reference to reparation for victims and inserting the qualification "in accordance with the principles of international responsibility". He supported the insertion of the words "acquiring, transferring" in the second sentence; he wondered whether "transferring" might be sufficient to encompass the sale of weapons as well. However, he was against the introduction of the words "deliberately or accidentally", as that would result in the illogical enjoinder to refrain from the accidental use of weapons.

15. **Ms. Pazartzis** said that the reference to affording reparation to victims was too specific for inclusion in a general comment. Introducing the words "deliberately or accidentally" would unnecessarily complicate the second sentence. The phrasing "threat or use of" was in line with the language used by the International Court of Justice and should be retained. Since general comment No. 14 had dealt with the issue of nuclear weapons, deleting the words "in particular nuclear weapons" could be seen as a step backwards.

16. **Mr. Heyns** agreed that deleting the reference to nuclear weapons would be a step backwards. He said that to categorically state that the threat or use of weapons of mass destruction amounted to a crime in all cases was problematic, as the determination of criminality was up to the courts, on a case-by-case basis; it was thus best to retain the formulation "may amount to a crime". Because the accidental use of such weapons was a major problem, he was in favour of introducing the words "deliberately or accidentally" to highlight the issue. He was in favour of deleting the clause referring to reparation so as not to create the impression that reparation was more important in the case of the testing or use of weapons of mass destruction than in other situations.

17. **Mr. Politi** said that the destruction of life was not just a possible outcome of the use of the weapons under discussion; it was a certainty. The relevant part of the first sentence could be amended to read, "in particular nuclear weapons, which are indiscriminate in

effect and are of a nature to destroy human life on a catastrophic scale". The Committee had emphasized the need to grant reparation to the victims of nuclear-weapons testing in its discussions with States parties, so it would be contradictory to remove the reference to reparation.

18. **Mr. Fathalla** said that both the word "threat" and the clause on reparation should be retained. However, he would replace "victims whose right to life has been adversely affected" with "victims whose right to life is adversely affected" in that clause. He supported the use of the phrase "are of a nature to" and the inclusion of the sale of weapons in the list of acts which States must refrain from performing.

19. **The Chair** said that he was in favour of keeping the reparation clause, adding "in accordance with the principles of international responsibility" and including "acquiring, transferring". It was important to distinguish between nuclear weapons and other weapons of mass destruction, such as chemical weapons. The existence of treaties which prohibited chemical and biological weapons, and to which many States had acceded, provided solid grounds for stating that the use of such weapons was incompatible with international law and respect for the right to life. However, according to the International Court of Justice, "there is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such". The Committee thus needed to be careful with its wording. Furthermore, in its advisory opinion, the Court discussed whether the threat or use of nuclear weapons was lawful; the issue before the Committee was whether the threat, as well as the use, of weapons of mass destruction was incompatible with respect for the right to life. It was important to bear that in mind. In the first sentence, he would prefer a reference to the indiscriminate use of such weapons, rather than to their indiscriminate effect. In his view, the phrase "may amount to a crime under international law" should be deleted.

20. The purpose of a general comment was to codify the Committee's interpretation of the Covenant. The Committee should thus be careful about using the general comment to set standards; in drafting the general comment, the Committee should base its interpretation on what international law actually said, not on what it should say. Moreover, there was a difference between treaty obligations and obligations under customary international law. It was therefore important to distinguish between best practices and Covenant obligations. Accordingly, he would suggest replacing "must" with "should" at the beginning of the second sentence, so that it read "States parties should take all necessary measures", while leaving "must" at the beginning of the third sentence, which read "They must also respect their international obligations".

21. **Mr. de Frouville** said that the danger surrounding nuclear weapons did not relate only to their deliberate use. It was important to make that point, in part because it had also been made in general comment No. 14, but also because in uncertain times such weapons could be deployed in error, owing for example to inadequate safeguards or a dysfunctional administration within a nuclear Power.

22. **Mr. Shany** recalled that, on first reading, the Committee had tried to strike a balance. He said that the aim was to reaffirm its concern over the use of weapons of mass destruction and their compatibility with the right to life and therefore avoid going back on its existing positions, while at the same time refraining from going further than the International Court of Justice in its advisory opinion on the legality of the threat or use of nuclear weapons. The notions of indiscriminate effect and catastrophic scale had been introduced in order to explain the threat to the right to life and the possibility that the use of such weapons might amount to a crime under international law.

23. With regard to the first sentence, he said that the Chair's proposal to use "indiscriminate" to qualify the use of such weapons would in his view weaken the proposition considerably, as the indiscriminate use of any weapon was incompatible with the right to life. The unique point in the case at hand was that weapons of mass destruction were, as Mr. Politi had indicated, almost by definition indiscriminate in their effect. He recalled that one State submission had asked whether the paragraph concerned all weapons of mass destruction or only those that were indiscriminate in their effect, and a similar distinction had been made in the context of the International Court of Justice advisory

opinion. The existing text was therefore well balanced. Destruction of life was not just a possible outcome of the use of the weapons under discussion; it was a certainty.

24. Mr. Koita's point about strengthening the language in respect of criminality harked back to discussions during the first reading. However, to assert such criminality would make it impossible to retain the word "threat", because the criminality of threats was much less clear under international law than the criminality of use. Moreover, as had been noted, there were certain evidentiary standards that needed to be met under criminal law. In retaining both "threat" and "may", the Committee would be saying nothing particularly radical. Once again, the draft attempted to strike a balance, one that he would like to try to preserve.

25. He agreed with Mr. Politi's proposal to replace "can destroy human life" with language making the point that the very nature of such weapons was to destroy human life. He also agreed with what appeared to be the majority position, that the words "in particular nuclear weapons" should not be removed. He therefore proposed that the first sentence should read: "The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to destroy human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law."

26. **Mr. Fathalla**, supported by **Mr. Koita**, **Mr. Heyns**, **Mr. Politi**, **Mr. Muhumuza** and **Mr. Santos Pais**, said that he agreed with the proposed draft.

27. **Mr. Shany** said that the second sentence would be amended to reflect Committee members' concern to cover the questions of transferring and selling. Further, in order to reflect their concern about accidental use, he proposed adding, after the words "to destroy existing stockpiles", the words "and to take adequate measures of protection against accidental use".

28. Mr. Koita had suggested alluding to the new Treaty on the Prohibition of Nuclear Weapons. He noted that it was not yet in force and proposed simply drawing attention to its existence in a footnote, to be added at the end of the second sentence.

29. The Chair had proposed replacing "must" with "should", but in his view that would alter the proposition, which was subordinated, as stipulated in the final phrase, to States parties' observance of their international obligations. Changing "must" to "should" would remove the imperative imposed by the reference to international obligations.

30. **Mr. Santos Pais** said that he agreed with the Rapporteur's proposals.

31. **Ms. Pazartzis** said that she agreed with the Rapporteur on retaining the word "must" and on the reference to taking adequate measures against accidental use. She had some reservations about referring to the new treaty at all, as it might then be necessary to refer to other treaties elsewhere in the text, which could be cumbersome.

32. **Mr. de Frouville** said that it was important to refer to the new treaty, which had after all been adopted by Member States and would eventually become international law by ratification, thereby making it a key reference for the future.

33. **Mr. Shany**, summing up, said that the amended text would read: "States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-State actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, and to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations."

34. In addition, he proposed inserting a footnote mentioning several international instruments, such as the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention and the Biological Weapons Convention, as well as the new Treaty on the Prohibition of Nuclear Weapons, and referring it to Committee members for feedback.

35. Turning to the third sentence, he proposed retaining the text in square brackets, in line with the apparent consensus within the Committee, and, to take account of Mr.

Fathalla's proposal, to amend the words "has been adversely affected" to read "has been or is being adversely affected". In addition, he proposed adding at the end the words "in accordance with the principles of international responsibility", which reflected the generally rather prudent approach the Committee was taking.

36. His initial reluctance to retain the part in square brackets had been due to the fact that the question of remedies was addressed more systematically elsewhere in the general comment. However, there was no harm in covering the issue in the current paragraph in the interests of clarity in an area in which States' practice was sometimes problematic; he recalled that there had been some prominent cases relating to reparation for harm caused by the testing of nuclear weapons.

37. **Mr. Santos Pais** said that he agreed with the proposals.

38. **Ms. Pazartzis** said that she also agreed, though she wished to register her reservations about maintaining the part about reparation to victims, as that would mean considering whether to make a similar reference in other paragraphs, such as paragraph 15.

39. **Mr. Shany** proposed amending the third sentence to read: "They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control and to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with the principles of international responsibility."

40. *Paragraph 13, as amended, was adopted.*

The meeting was suspended at 11.25 a.m. and resumed at 11.45 a.m.

Paragraph 14

41. **Mr. Shany** said that the Committee had received a number of submissions from third parties on paragraph 14. Some States had objected to the paragraph as a whole, on the grounds that the Committee was exceeding its mandate. Some had suggested that the paragraph set overly strict criteria for the use of less-lethal weapons, while others had proposed that the Committee should include a reference to international humanitarian law. The United Kingdom and Amnesty International had pointed out that the commentary on article 1 of the Code of Conduct for Law Enforcement Officials included soldiers charged with law enforcement missions in its definition of "law enforcement officials"; he agreed with their proposal to use that phrase in preference to "law enforcement agents and soldiers charged with a law enforcement missions". One contributor had suggested that the formulation "designed for use" in the first sentence was too narrow. He agreed that it could be construed as excluding the possibility that some less-lethal weapons used for law enforcement had been designed for other purposes. He therefore proposed amending the formulation so that it read "designed for use and used". The American Civil Liberties Union had suggested that the penultimate sentence was not sufficiently restrictive and that the Committee should underscore that the measures taken by States parties should respond to a specific threat. With that in mind, he proposed amending the end of the sentence such that it read "clearly are inadequate to address the threat". Amnesty International had pointed out that States parties should not only monitor the impact of less-lethal weapons on the right to life, but also ensure independent testing or evaluation of such weapons. He therefore proposed inserting "should evaluate and" before "monitor" in the first sentence. One organization had suggested deleting the reference to "rubber-coated metal bullets" from the first sentence, because they were too dangerous to be categorized as less-lethal weapons. He endorsed that organization's proposal to refer to "rubber or foam bullets" instead. That would necessitate inserting "other" before "attenuating energy projectiles". He also endorsed the same organization's proposal to place the words "less-lethal" in quotation marks. The same organization had asked whether the "international protocols" alluded to in the second sentence were existing or future international protocols. For the sake of clarification, he proposed inserting the words "the most current" before "international protocols".

42. **Mr. Ben Achour** said that, in the first sentence of the paragraph, "States parties should monitor" should be amended to "States parties must monitor". He wondered whether there was a technical term for "rubber-coated metal bullets", which might be more appropriate. Lastly, it was unclear whether the "international protocols" mentioned in the third sentence were to be understood in the technical sense of the word "protocol", in which case a more appropriate term might be "international standards", or in reference to specific international norms, in which case a footnote should be inserted indicating which ones.

43. **Mr. de Frouville** said that there were inconsistencies in the translation of "less-lethal weapons" in the French version of the paragraph: he proposed that the term "*armes à létalité réduite*" should be used throughout. He agreed that "law enforcement officials", a term for which there was a precedent not only in the Code of Conduct for Law Enforcement Officials but also in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, should replace "law enforcement agents and soldiers charged with law enforcement missions" and proposed that it should be used throughout the paragraph. He also agreed that "rubber-coated metal bullets" should be replaced with "rubber or foam bullets".

44. With regard to the penultimate sentence, he wondered whether, by insisting that less-lethal weapons could only be used in "situations of exceptional nature", the Committee was downplaying the importance of the requirement of proportionality. He considered that requirement to be paramount, because the purpose of less-lethal weapons was to replace lethal weapons in any and all situations where it would be inappropriate to use the latter. He therefore proposed that any reference to an exceptionality criterion should be removed. Furthermore, in the final sentence, the idea that States parties should not resort to the use of less-lethal weapons "in routine situations" should be clarified. He proposed referring to the right to peaceful assembly established under article 21 of the Covenant and the consequent inappropriateness of using less-lethal weapons, or any other weapons for that matter, against persons exercising that right. Such a formulation would imply that it was only appropriate to use less-lethal weapons for crowd control purposes in the event of demonstrations that were not peaceful, and then only if the proportionality requirement was met.

45. **Mr. Santos Pais** said that he agreed with Mr. Shany's proposals. Unlike Mr. de Frouville, however, he preferred to keep the reference to using less-lethal weapons only in situations of an exceptional nature, subject to the requirements of necessity and proportionality, as it served as an additional constraint on States parties' use of such weapons. He was not opposed to clarification of the term "routine situations" in the final sentence, but felt that the concerns expressed by Mr. de Frouville in that regard were already covered in the text.

46. **Ms. Waterval** said that she agreed with Mr. Shany's proposals, but would appreciate clarification of the proposed amendments to "law enforcement agents and soldiers charged with law enforcement missions", in the first sentence, and "international protocols", in the second sentence.

47. **Mr. Heyns** said that, given the specific nature of the issue addressed in the paragraph, it might be better placed after paragraph 18 in section II, rather than in section I, which was reserved for general remarks. Moreover, in view of the fact that the Committee was ultimately encouraging States parties to make less-lethal weapons available to law enforcement officials instead of other types of weapons such as firearms, he suggested inserting a general sentence to that effect at the beginning of the paragraph.

48. He did not think that it was necessary to place "less-lethal" in quotation marks, because the weapons in question were indeed less lethal than other weapons, such as firearms. He agreed, however, that rubber-coated metal bullets should not feature in the list of less-lethal weapons. Regarding the comment by Amnesty International that States parties should ensure independent testing or evaluation of such weapons, he believed that "testing" was a stronger word than "evaluation" and that the testing of less-lethal weapons was a necessary precaution incumbent on States parties. That said, not all States parties had the capacity to carry out tests on such weapons independently. He therefore proposed that language should be added to the first sentence indicating that States parties should ensure

that less-lethal weapons were subjected to strict independent testing, a requirement which all States parties should be able to meet.

49. In the second sentence, the word "only", after "restricted", was redundant. He agreed that the term "law enforcement officials" should be used throughout: no part of the paragraph should be open to the interpretation that the Committee was encouraging the deployment of soldiers for law enforcement purposes. The phrase "international protocols for their use", in the same sentence, was problematic. He proposed the alternative wording "international rules on their use, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other applicable international standards". International standards on less-lethal weapons were still in development, but his formulation would cover them once they were adopted. Lastly, it was important to maintain the language on "situations of exceptional nature" and "routine situations". Certain less-lethal weapons, such as water cannons, were too often a first resort for States parties keen to put on a show of force. It should be made clear that such weapons should only be used on an exceptional basis.

50. **Ms. Brands Kehris** said that she supported the proposals put forward by Mr. Shany. Mr. Heyns' proposal to use the word "testing" was interesting, but a reference to the need to "evaluate" should be retained, as that word had a broader scope. She was in favour of retaining the reference to "situations of exceptional nature", but agreed with Mr. de Frouville's concerns regarding "routine situations", as what constituted a routine situation was open to interpretation by each State party. Perhaps inserting language about peaceful demonstrations, in line with Mr. de Frouville's proposal, would address the Committee's concern more effectively.

51. **Ms. Kran** said that she agreed with Mr. Shany's proposals, as supplemented by Mr. Heyns' amendments. She particularly favoured the proposal to make reference to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in the paragraph, which would necessitate replacing "law enforcement agents" with "law enforcement officials" for the purpose of aligning the two texts.

52. **Mr. Ben Achour** said that in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, the notion of "law enforcement officials", in principle, extended only to "officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention". Only in exceptional cases, in "countries where police powers were exercised by military authorities", was the definition of law enforcement officials regarded as including military officers. He was therefore against replacing the whole phrase "law enforcement agents and soldiers charged with law enforcement missions" with "law enforcement officials".

53. **Mr. Politi** said that he agreed, by and large, with Mr. Shany's proposals. He was interested in Mr. Heyns' proposal to insert a sentence at the beginning of the paragraph that would encourage States parties to resort to less-lethal weapons rather than weapons with potentially lethal consequences. He wondered whether, if such a sentence were to be added, the paragraph would be better placed after paragraph 11, on individuals or entities empowered to use force with potentially lethal consequences. He agreed with those speakers who found that "routine situations" was too vague a term; inserting language that made reference to peaceful demonstrations would be a better solution.

54. **The Chair** said that he too was uncomfortable with the use of the phrase "in routine situations"; it was important to ensure that the final sentence could not be construed as endorsing the use of lethal weapons for crowd control purposes. With regard to the penultimate sentence, he felt that it was important to set strict requirements on the use of less-lethal weapons. As such, the three requirements of necessity, proportionality and exceptionality should be maintained. The Committee's general position was that the use of less-lethal weapons was preferable to the use of lethal weapons. If the strict restrictions set out in the penultimate sentence were spelled out clearly, the last sentence might be redundant.

55. **Mr. Heyns** said that the fourth sentence concerned the standard operating procedures of law enforcement officials and made clear that less-lethal weapons should not

be used to intimidate the public. The term "routine situations" was often used in that context. However, he would not object to its replacement if a suitable alternative could be proposed.

56. **Mr. Politi** said that the sequence of the paragraphs seemed illogical. In paragraph 14, the Committee was expressing a preference for the use of less-lethal weapons over the use of lethal weapons. However, the use of lethal weapons had not yet been addressed in the draft.

57. **Mr. Shany** said that it was for the Committee to decide, perhaps at a later stage, whether paragraph 14 should be placed alongside paragraphs 18 and 19, which both dealt with the use of weapons, or alongside paragraphs 12 and 13, which dealt with the weapons themselves.

58. **The Chair** invited the Rapporteur to offer a revised version of each sentence of the paragraph, taking into account Committee members' proposals and comments.

59. **Mr. Shany**, referring to the first sentence, said that, rather than include an additional sentence stating that non-lethal, rather than lethal, weapons should be made available to law enforcement officials, he would propose to include the words "While preferable to more lethal weapons" at the beginning of the sentence. He believed that would be a better way of conveying the intended message. He agreed with Mr. Heyns that the term "law enforcement officials", which included soldiers exercising police powers, should be used throughout. Nevertheless, the sentence should explicitly state that such soldiers were covered by the term. A footnote could be included with a reference to the relevant section of the commentary to the Code of Conduct for Law Enforcement Officials. He was in favour of placing "less-lethal" in quotation marks. In order to take account of other comments by Committee members, the sentence would state that less-lethal weapons were subject to strict independent testing and that States parties were required to evaluate, as well as to monitor, their impact.

60. As amended, the whole sentence would then read: "While preferable to more lethal weapons, States parties should ensure that 'less-lethal weapons' are subject to strict independent testing and evaluate and monitor the impact on the right to life of these weapons which are designed for use or used by law enforcement officials, including soldiers charged with law enforcement missions, such as electro-muscular disruption devices (Tasers), rubber or foam bullets, and other attenuating energy projectiles."

61. **Mr. Heyns** said it was often the case that law enforcement officials responsible for crowd control were equipped with lethal weapons such as firearms, but not with less-lethal ones. He had therefore proposed that the first sentence should be preceded by a new sentence explaining that States parties had an obligation to prevent such officials from being forced to defend themselves with lethal weapons. That new sentence would read: "Where appropriate, less-lethal weapons should be made available to law enforcement officials."

62. **Mr. Shany** said that he did not agree with Mr. Heyns' proposal because, as pointed out by **Ms. Pazartzis**, the equipping of police forces responsible for crowd control with effective non-lethal means was covered by paragraph 18.

63. **The Chair** said he took it that the Committee wished to adopt the first sentence, as amended orally by the Rapporteur, subject to minor editorial changes.

64. *It was so decided.*

65. **Mr. Shany**, referring to the second sentence, said that the word "agents" should be replaced with "officials" to bring the sentence into line with the previous one, as amended. Taking account of the other proposed amendments, the second sentence would read: "The use of such weapons must be restricted only to law enforcement officials who have undergone appropriate training, and must be strictly regulated in accordance with applicable international standards for their use, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials."

66. **The Chair** said he took it that the Committee wished to adopt the second sentence, as amended orally by the Rapporteur, subject to minor editorial changes.

67. *It was so decided.*

68. **Mr. Shany**, referring to the third sentence, said that the reference to the principles of necessity and proportionality established a threshold for the use of less-lethal weapons. In light of the Committee's discussion of the sentence, the word "strict" would be inserted before "requirements" and the words "to address the threat" would be added at the end of the sentence.

69. **Mr. de Frouville** said that the inclusion of the words "of exceptional nature", which could be taken to imply a state of armed conflict, risked setting too high a threshold for the use of less-lethal weapons. The reference to the principles of necessity and proportionality was sufficient to put across the Committee's position in that regard.

70. **The Chair**, supported by **Mr. Heyns**, proposed that, in order to address Mr. de Frouville's concern, the words "of exceptional nature" should be deleted.

71. **Ms. Kran** proposed replacing the word "inadequate" with "ineffective", which was the adjective used in a similar context in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

72. **Mr. Shany** said that he accepted the Chair's and Ms. Kran's proposals. As amended, the sentence would thus read: "Furthermore, such less-lethal weapons can only be employed, subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be, or clearly are, ineffective in addressing the threat."

73. **The Chair** said he took it that the Committee wished to adopt the third sentence, as amended orally by the Rapporteur.

74. *It was so decided.*

75. **Mr. Shany**, referring to the fourth sentence, said that the words "For example" were no longer needed. He proposed that, in order to take account of Committee members' proposals and comments, the sentence should be reformulated to read: "States parties should not resort to less-lethal weapons in situations of crowd control and demonstrations which can be contained through less harmful means, especially those situations involving the exercise of the right to peaceful assembly."

76. **Ms. Kran** said that the new wording proposed by the Rapporteur inadvertently gave the impression that the Committee condoned the containment of the exercise of the right to peaceful assembly.

77. **Mr. Politi** said that the use of the word "especially" established an unhelpful distinction between situations that involved the exercise of the right to peaceful assembly and those that did not.

78. **Mr. Shany** said that he understood Ms. Kran's and Mr. Politi's concerns, and proposed deleting "and demonstrations" and replacing the word "contained" with "addressed".

79. **The Chair** said that the discussion of paragraph 14 would be continued at the Committee's next session.

The meeting rose at 1 p.m.